



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**Docket No. 170712657-7659-01**

**RIN 0648-BG85**

**International Fisheries; Pacific Tuna Fisheries; Restrictions on Fishing for Sharks in the Eastern Pacific Ocean**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations under the Tuna Conventions Act to implement Resolution C-16-05 (*Resolution on the Management of Shark Species*) of the Inter-American Tropical Tuna Commission (IATTC) adopted in July 2016. Per the Resolution, this proposed rule would require purse seine vessel owners, operators, and crew to follow specified release requirements for sharks in the eastern Pacific Ocean (EPO). The rule would also prohibit longline vessels targeting tuna or swordfish in the EPO from using “shark lines” (a type of fishing gear used on longline vessels to target sharks). This proposed rule is necessary for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** Comments on the proposed rule and supporting documents must be submitted in writing by *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2017-0068, by any of the following methods:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0068>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

*Mail:* Submit written comments to Daniel Studt, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2017-0068” in the comments.

*Instructions:* Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2017-0068, or by contacting the Regional Administrator, Barry A. Thom, NMFS West Coast Region, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232-1274, or *RegionalAdministrator.WCRHMS@noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Daniel Studt, NMFS, West Coast Region, 562-980-4073.

## **SUPPLEMENTARY INFORMATION:**

### **Background on the IATTC**

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: [https://www.iattc.org/PDFFiles2/Antigua\\_Convention\\_Jun\\_2003.pdf](https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf).

The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, shark, and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

### **International Obligations of the United States under the Antigua Convention**

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement certain decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by Title II of Public Law 114-81, directs that the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, may promulgate

such regulations as may be necessary to carry out the United States' international obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The Secretary of Commerce's authority to promulgate such regulations has been delegated to NMFS.

### **Resolution on the Management of Shark Species**

The IATTC adopted Resolution C-16-05 by consensus at its 90th meeting in July 2016 in response to the IATTC scientific staff's conservation recommendations to adopt release requirements for sharks caught by purse seine vessels and to prohibit the use of shark lines by longline vessels. The main objective of Resolution C-16-05 is to promote the conservation of shark species in the EPO by reducing incidental catch mortalities in IATTC fisheries. Although U.S. commercial fishing vessels in the EPO do not target sharks, some are caught incidentally.

The resolution includes release requirements for sharks caught on purse seine vessels, which is expected to increase the chance of survival. Based on summarized catch data from the IATTC, silky shark (*Carcharhinus falciformis*) and hammerhead shark (*Sphyrna spp.*) are among the shark species most frequently caught by purse seine vessels fishing for tuna in the IATTC Convention Area. Global concern for these species of sharks has increased in recent years as evidenced by the listing of scalloped hammerhead shark (*Sphyrna lewini*) in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in September 2014 and the future listing of silky shark in Appendix II in October 2017. In addition, NMFS designated the Eastern Pacific ocean distinct population segment of scalloped hammerhead shark as endangered under the Endangered Species Act (79 FR 38213; July 2014), and it is this population that is incidentally caught by tuna fishing vessels in the IATTC Convention Area.

Resolution C-16-05 includes two components that need to be implemented through rulemaking: 1) release requirements for sharks caught by purse seine vessels, and 2) prohibiting the use of “shark lines” on longline vessels fishing in the IATTC Convention Area.

The first component of the Resolution calls for IATTC members and cooperating non-members (CPCs) to require purse seine vessels to follow requirements for the release of sharks caught in the IATTC Convention Area. Per the Resolution, any shark caught on a purse seine vessel in the IATTC Convention Area, whether live or dead, and that is not retained, must be promptly released unharmed, to the extent practicable, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If a shark is live when caught, the shark must be released out of the net by directly releasing it from the brailer into the ocean. Sharks that cannot be released without compromising the safety of persons or the sharks before being landed on deck must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the vessel, or through escape hatches. If ramps or escape hatches are not available, the sharks must be lowered with a sling or cargo net, using a crane or similar equipment, if available. The Resolution also includes provisions that prohibit the use of gaffs, hooks, or similar instruments in the handling of sharks, the lifting of sharks by the head, tail, gill slits, or spiracles, or by using bind wire against or inserted through the body, punching holes through the bodies of sharks (e.g., to pass a cable through for lifting the shark). In addition, the proposed rule would prohibit the towing of a whale shark (*Rhincondon typus*) out of a purse seine net (e.g., using towing ropes).

The second component of the Resolution prohibits longline vessels targeting tuna or swordfish in the IATTC Convention Area from using “shark lines.” Shark lines are a type of fishing gear used to target sharks and consist of an individual hooked line or hooked lines

attached to the floatline, or directly to the floats of longline gear, and deployed in the water column at depths shallower than the mainline.

### **Proposed Regulations for Sharks**

This proposed rule would implement the two provisions of Resolution C-16-05, as described above, for U.S. commercial fishing vessels fishing for tuna or tuna-like species in the IATTC Convention Area. In addition, this proposed rule would also revise related regulations for accuracy and clarification purposes.

NMFS regulations already include fishing restrictions for shark species in the IATTC Convention Area. For example, NMFS regulations already require U.S. purse seine vessels fishing for tuna or tuna-like species to release all sharks, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. In addition, regulations at 50 CFR 300.27 already require U.S. purse seine vessels to ensure reasonable steps are taken to ensure safe release of any whale shark that is encircled in a purse seine net in the IATTC Convention Area.

This proposed rule would revise regulations at 50 CFR 300.27 to include more specific release requirements for sharks on purse seine vessels. The proposed regulations would require that any shark caught on a purse seine vessel in the IATTC Convention Area, whether live or dead, be promptly released unharmed, to the extent practicable, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. The proposed regulations also include specific requirements for the release of live sharks when caught in the IATTC, as described above.

In addition, this proposed rule would prohibit U.S. commercial longline vessels fishing for tuna or swordfish from using “shark lines” in the IATTC Convention Area. Shark lines are

defined as a type of fishing gear consisting of an individual line or lines attached to the floatline or directly to the floats of longline gear and are typically used to target sharks. Although U.S. longline vessels do not use shark lines when fishing in the IATTC Convention Area, this provision of the Resolution was intended to prohibit this gear in the EPO for all IATTC CPCs.

### **Classification**

The NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and existing collection-of-information requirements still apply under the following Control Numbers: 0648-0148, 0648-0214, and 0648-0593. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is provided in the following paragraphs.

As described previously in the **SUPPLEMENTARY INFORMATION** section, the proposed regulations would implement IATTC Resolution C-16-05, which would establish fishing restrictions on U.S. purse seine and longline vessels fishing in the IATTC Convention Area.

The United States Small Business Administration (SBA) defines a “small business” (or “small entity”) as one with annual revenue that meets or is below an established size standard. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. SBA current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194. The new standard results in fewer commercial finfish businesses being considered small.

NMFS prepared analyses for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. Under the new size standards, the action on purse seine restriction on sharks would affect both large and small businesses, but the affected longline vessels are all considered to be small businesses.

There are two components to the U.S. tuna purse seine fishery in the EPO: (1) purse seine vessels with at least 363 metric tons (mt) of fish hold volume (size class 6 vessels) that typically have been based in the western and central Pacific Ocean (WCPO), and (2) coastal purse seine



vessels with smaller fish hold volume that are based on the U.S. West Coast. Because this regulation would apply to purse seine vessels that catch shark, and there is no record of the coastal purse seine vessels catching shark, NMFS does not expect these regulations to impact the smaller coastal purse seine vessels.

As of May 4, 2017, there are 17 size class 6 purse seine vessels on the IATTC Regional Vessel Register. The number of size class 6 purse seine vessels on the IATTC Regional Vessel Register has increased substantially in the past three years, due in part to uncertainty regarding fishing access pursuant to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (aka the South Pacific Tuna Treaty), for which negotiations were concluded in 2016. Size class 6 purse seine vessels land most of the yellowfin, skipjack, and bigeye tuna catch in the EPO. Ex-vessel price information for class size 6 purse seine vessels that fished exclusively in the EPO in 2015 and 2016 specific to the individual vessels are not available to NMFS because these vessels did not land on the U.S. West Coast, and the cannery receipts are not available through the IATTC. However, estimates for large purse seine vessels based in the WCPO that fish in both the EPO and WCPO may be used as a proxy for U.S. large purse seine vessels. The number of these U.S. purse seine vessels is approximated by the number with Western and Central Pacific Fisheries Commission (WCPFC) Area Endorsements, which are the NMFS-issued authorizations required to fish commercially for highly migratory species (HMS) on the high seas in the WCPFC Convention Area. As of May 2017, the number of purse seine vessels with WCPFC Area Endorsements was 37. Neither gross receipts nor ex-vessel price information specific to individual fishing vessels are available to NMFS, so NMFS applied indicative regional cannery prices—as approximations of ex-vessel prices—to annual catches of individual vessels to estimate their annual receipts.

Indicative regional cannery prices are available through 2014 (developed by the Pacific Islands Forum Fisheries Agency; available at <https://www.ffa.int/node/425>). Using this approach, NMFS estimates that among the affected vessels, the range in annual average receipts in 2012 through 2014 was \$3 million to \$20 million and the median was about \$13 million.

U.S. purse seine vessels fishing in the IATTC Convention Area incidentally catch a relatively small number of sharks. Since at least 2005, the observer coverage rates in the EPO on class size 6 purse seine vessels have been at 100 percent. Logbook data from 2015 and 2016 recorded a total of 3,960 sharks incidentally caught by size class 6 purse seine vessels operating in the IATTC Convention Area, which were released alive or discarded. This resulted in an average of roughly 2.29 sharks per fishing set caught and discarded or released alive by size class 6 purse seine vessels operating in the IATTC Convention area in 2015 and 2016. The proposed regulations for shark release requirements on purse seine vessels may slow fishing operations of some purse seine vessels that incidentally catch sharks due to additional time burden for releasing them by implementing the release requirements. In addition to the additional time burden for releasing sharks, some tuna may be incidentally released when sharks are directly released out of the brailer into the ocean, if any tuna are also scooped up into the brailer along with sharks during the process. The amount of tuna incidentally released would vary depending on the position of the shark in the net in relation to the tuna, accuracy of the crew member in targeting the shark with the brailer, and how large a brailer is being used, among others factors. In addition, some large purse seine vessels may already be voluntarily following some of these release procedures, such as the best practices for release established by the International Seafood Sustainability Foundation, in the IATTC Convention Area.

U.S. West Coast vessels with deep-set longline gear primarily target tuna species with a small percentage of swordfish and other highly migratory species taken incidentally. U.S. West Coast-based longline vessels fish primarily in the EPO and are currently restricted to fishing with deep-set longline gear outside of the U.S. West Coast EEZ. Recently, the number of Hawaii-permitted longline vessels that have landed in U.S. West Coast ports has increased from one vessel in 2006 to 18 vessels in 2016. In 2016, 931 mt of highly migratory species were landed by Hawaii permitted longline vessels with an average ex-vessel revenue of approximately \$303,287 per vessel. Since at least 2005, the observer coverage rates in the EPO on deep-set longline vessels have been a minimum of 20 percent. While some sharks are caught incidentally, U.S. commercial longline vessels do not use shark lines while fishing in the EPO. As such, this proposed rule is not expected to affect these small entities.

The proposed regulation is not expected to have a significant economic impact on a substantial number of small entities. Only some of the entities for which these proposed regulations would apply are considered small businesses; however, disproportional economic effects are not expected between affected small and large businesses. Regulations at 50 CFR 300.27 already require purse seine vessels to release all sharks, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. In addition, regulations at 50 CFR 300.27 already require purse seine vessels to ensure reasonable steps are taken to ensure safe release of any whale shark that is encircled in a purse seine net. This proposed rule would revise regulations at 50 CFR 300.27 to specify the release requirements for sharks. As stated above, U.S. longline vessels do not use shark lines while fishing for tuna or swordfish in the EPO. Therefore, the proposed regulation is not expected to impact these small entities.

The proposed actions are not expected to substantially change the typical fishing practices of affected vessels, and any impact to the income of U.S. vessels would be minor. As a result, an Initial Regulatory Flexibility Analysis is not required, and one was not prepared for this proposed rule.

#### **List of Subjects in 50 CFR Part 300**

Fish, Fisheries, Fishing, Fishing vessels, International organizations, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: August 1, 2017.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

#### **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

##### **Subpart C—Eastern Pacific Tuna Fisheries**

1. The authority citation for part 300, subpart C, continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*

2. In § 300.21, add a definition for “Shark line” in alphabetical order to read as follows:

**§ 300.21 Definitions.**

\* \* \* \* \*

*Shark line* means: a type of fishing gear used to target sharks and consisting of an individual hooked line or hooked lines attached to the floatline or directly to the floats of longline gear and deployed in the water column at depths shallower than the mainline.

\* \* \* \* \*

3. In § 300.24, revise paragraphs (w), (x), (cc), and (dd), and add paragraphs (jj) through (kk) to read as follows:

**§ 300.24 Prohibitions.**

\* \* \* \* \*

(w) Set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) in contravention of § 300.27(g).

(x) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in § 300.27(h).

\* \* \* \* \*

(cc) To retain on board, transship, store, land, sell, or offer for sale any part or whole carcass of a mobulid ray, as described in § 300.27(i).

(dd) Fail to handle or release a mobulid ray as required in § 300.27(j).

\* \* \* \* \*

(jj) Fail to handle or release a shark as required in § 300.27(k).

(kk) Use a shark line in contravention of § 300.27(l).

4. In § 300.27, revise paragraphs (b) and (h), and add paragraphs (k) and (l) to read as follows:

**§ 300.27 Incidental catch and tuna retention requirements.**

\* \* \* \* \*

(b) *Release requirements for non-tuna species on purse seine vessels.* All purse seine vessels must release all billfish, ray (not including mobulid rays, which are subject to paragraph (i) of this section), dorado (*Coryphaena hippurus*), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. Sharks caught in the IATTC Convention Area and that are not retained for consumption aboard the vessel (other than silky shark, oceanic whitetip shark, and whale shark, which may not be retained for consumption) must be released according to the requirements in paragraph (k) of this section.

\* \* \* \* \*

(h) *Whale shark release.* The crew, operator, and owner of a fishing vessel of the United States commercially fishing for tuna in the Convention Area must release as soon as possible, any whale shark that is encircled in a purse seine net, and must ensure that all reasonable steps are taken to ensure its safe release. No whale shark may be towed out of a purse seine net (e.g., using towing ropes).

\* \* \* \* \*

(k) *Shark handling and release requirements for purse seine vessels.* The crew, operator, and owner of a U.S. commercial purse seine fishing vessel must promptly release unharmed, to the extent practicable, any shark (whether live or dead) caught in the IATTC Convention Area, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If a shark is live when caught, the crew, operator, or owner must follow release procedures in the following two paragraphs.

(1) Sharks must be released out of the purse seine net by directly releasing the shark from the brailer into the ocean. Sharks that cannot be released without compromising the safety of persons or the sharks before being landed on deck must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the boat, or through escape hatches. If ramps or escape hatches are not available, the sharks must be lowered with a sling or cargo net, using a crane or similar equipment, if available.

(2) No shark may be gaffed or hooked, lifted by the head, tail, gill slits or spiracles, or lifted by using bind wire against or inserted through the body, and no holes may be punched through the bodies of sharks (e.g., to pass a cable through for lifting the shark).

(1) *Shark line prohibition for longline vessels.* Any U.S. longline vessel used to fish for tuna or swordfish is prohibited from using any shark line in the IATTC Convention Area.

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